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 THE CENTER FOR INVESTIGATIVE
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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

THE CENTER FOR INVESTIGATIVE
 REPORTING and WILL EVANS,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
 LABOR,

Defendant.

) Case No. 22-cv-07182-WHA

) **JOINT STATEMENT IN RESPONSE TO**
) **COURT'S MARCH 19, 2024 ORDER (DKT. NO.**
) **66)**

Pursuant to the Court's Order dated March 19, 2024, Dkt. No. 66, the parties submit this Joint
 Statement.

1 The parties respectfully submit that the Court’s December 22, 2023 Order requiring the
2 Department of Labor (“DOL”) to release EEO-1 reports under the Freedom of Information Act
3 (“FOIA”) is immediately appealable as either a final order under 28 U.S.C. § 1291 or as an order
4 granting an injunction under 28 U.S.C. § 1292(a)(1). *See In re Steele*, 799 F.2d 461, 465 (9th Cir. 1986)
5 (“A disclosure order in a FOIA suit is injunctive in nature” and therefore appealable under 28 U.S.C.
6 § 1292(a)(1) even if interlocutory); *ACLU v. United States Dep’t of Justice*, 880 F.3d 473, 480 n.3 (9th
7 Cir. 2018) (order granting partial summary judgment to plaintiff in FOIA case is appealable under
8 Section 1291; a “‘final decision’ in a FOIA case [is] ‘an order by the District Court requiring release of
9 documents by the Government to the plaintiff, or order denying the plaintiff’s right to such release’”
10 (quoting *In re Steele*, 799 F.2d 461, 464 (9th Cir. 1986)). In *ACLU*, the district court bifurcated the
11 FOIA request for summary judgment purposes, and the partial cross-motions for summary judgment
12 addressed only part of the request. 800 F.3d at 481 n.5. Despite this bifurcation and the fact that part of
13 the case remained to be adjudicated by the district court, the Ninth Circuit held that it had jurisdiction
14 pursuant to 28 U.S.C. § 1291 over the government’s appeal of the district court’s grant of partial
15 summary judgment ordering disclosure under FOIA.

16 Accordingly, DOL’s pending appeal can proceed without the need for this Court to enter final
17 judgment or to certify appeal pursuant to 28 U.S.C. § 1292(b).

18 Regarding the 621 contractors’ EEO-1 reports referenced in the Court’s March 19, 2024 Order,
19 Dkt. No. 66, the parties continue to disagree about whether these reports are “agency records” within the
20 meaning of FOIA. The parties also disagree about whether the pending appeal divests this Court of
21 jurisdiction over this issue. At this time, the parties have agreed and respectfully request that, to the
22 extent necessary, further proceedings in this Court concerning those 621 contractors’ EEO-1 reports be
23 stayed until after the issuance of the Ninth Circuit’s mandate in the pending appeal.¹

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¹ This stipulation is limited to the EEO-1 reports of the 621 contractors.

1 DATED: March 26, 2024

Respectfully submitted,

2 ISMAIL J. RAMSEY
United States Attorney

3 /s/ Pamela T. Johann
4 PAMELA T. JOHANN
Assistant United States Attorney

5 Attorneys for Defendant

6
7 DATED: March 26, 2024

CANNATA O'TOOLE & OLSON

8 /s/ Aaron Field
9 AARON FIELD

10 Attorneys for Plaintiffs

11 **ATTESTATION**

12 I, Pamela T. Johann, hereby attest under penalty of perjury that in compliance with Civil Local
13 Rule 5-1(i)(3), I have obtained the concurrence in the filing of this document from counsel for Plaintiffs.

14 /s/ Pamela T. Johann
15 PAMELA T. JOHANN